

# PROFESSIONAL SERVICES CONTRACT

## between the City of Sumner and XXXX.

THIS CONTRACT is made between the City of Sumner, a Washington municipal corporation (hereinafter the "City"), and XXX (hereinafter "Artist")(collectively, the "Parties").

### **I. DESCRIPTION OF WORK.**

Artist shall perform the following services for the City in accordance with the following described plans and/or specifications:

Design and paint a mural on the XXX wall of XXX consistent with the design provided to, and approved by, the City of Sumner Cultural Art's Commission and the building owner.

Artist further represents that the services furnished under this Contract will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time those services are performed.

**II. TIME OF COMPLETION.** The Parties agree that work will begin on the task described in Section I above immediately upon the effective date of this Contract and that the work shall be completed by XXX.

### **III. COMPENSATION.**

- A. The City, by and through allocated and approved funds of the City's Cultural Arts Commission, shall pay a flat rate of XXX for the services described in this Contract. This is the maximum amount to be paid under this Contract for the work described in Section I above and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Contract.
- B. Upon the completion of the work, Artist shall submit an invoice for the flat rate fee agreed upon in Section III.A. Upon receipt of the Artist's invoice, the City will inspect the work to ensure that it complies with the Description of Work outlined in Section I. If the City determines that the work is complete and meets the Description of Work in Section I, the City shall provide payment within thirty (30) days of receipt of the invoice. If the City objects to all or any portion of the work, it shall notify Artist and reserves the option to only pay that portion of the invoice not in dispute. In that event, the Parties will promptly make every effort to settle the disputed portion.

**IV. INDEPENDENT CONTRACTOR.** The Parties intend that an Independent Contractor-Employer Relationship will be created by this Contract and that Artist has the ability to control and direct the performance and details of its work, the City being interested only in the results obtained under this Contract.

**V. TERMINATION.** Either party may terminate this Contract, with or without cause, upon providing the other party fifteen (15) days written notice at its address set forth on the

signature block of this Contract. After termination, the City may take possession of all records and data within Artist's possession pertaining to this project, which may be used by the City without restriction. If the City's use of Artist's records or data is not related to this project, it shall be without liability or legal exposure to Artist. Should the Artist terminate the Contract prior to completion of the work, the Artist is responsible for all costs incurred by the Artist prior to the service of notice of termination and the Artist shall not be entitled to any compensation by the City under this Contract. Should the City terminate the Contract prior to the completion of the work, the City shall reimburse the Artist all reasonable costs incurred by the Artist prior to the service of notice of termination by the City.

**VI. DISCRIMINATION.** In the hiring of employees for the performance of work under this Contract or any subcontract, Contractor, its sub-contractor, or any person acting on behalf of Artist or shall not, by reason of race, religion, color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

**VII. INDEMNIFICATION.** Artist shall defend, indemnify and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses or suits, including copyright infringement claims, and attorney fees, arising out of or in connection with the Artist's negligent performance of this Contract, except for injuries and damages caused by the sole negligence of the City. Artist specifically acknowledges and accepts that he/she is an independent contractor, with no employees, no casual laborers, and no sub-contractors performing work, and additionally acknowledges and accepts that he/she is not an employee of the City for workers' compensation purposes, and therefore, is not entitled to workers' compensation benefits. By signature below, Artist hereby waives any and all rights to file any claims against the City in the event an accident should occur during the performance of the work contemplated hereunder.

Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Artist and the City, its officers, officials, employees, agents and volunteers, Artist's liability hereunder shall be only to the extent of Artist's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES ARTIST'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The provisions of this section shall survive the expiration or termination of this Contract.

**IX. EXCHANGE OF INFORMATION.** The City will provide its best efforts to provide reasonable accuracy of any information supplied by it to Artist for the purpose of completion of the work under this Contract.

**X. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.** Original documents, drawings, designs, reports, or any other records developed or created under this Contract shall belong to and become the property of the City, and the Artist hereby grants to the City an unlimited, non-exclusive license to use and reproduce the image for marketing and advertising purposes. Artist hereby warrants that the mural painted in the provision of services contemplated under this Contract shall be his own original work.

**XI. CITY'S RIGHT OF INSPECTION.** Even though Artist is an independent Contractor with the authority to control and direct the performance and details of the work authorized under this Contract, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure satisfactory completion.

**XII. PUBLIC RECORDS ACT.** The City is required to comply with the Public Records Act, codified in Chapter 42.56 RCW. From time to time, the City will receive requests for public records regarding City business. When a public records request is made regarding work performed or documents created under this Contract, Artist shall conduct a thorough search of any and all potentially responsive public records created or maintained in the course of completing this Contract, shall provide those documents to the City in a timely manner following the request for search, and shall retain said records in accordance with the retainage schedule as published by the Washington Secretary of State. Following completion of the work pursuant to this contract, Artist shall provide to the City any and all documents prepared, created or maintained in the course of completing this Contract.

**XIII. WORK PERFORMED AT ARTIST'S RISK.** Artist shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and sub contractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Artist's own risk, and Artist shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

**XIV. MISCELLANEOUS PROVISIONS.**

A. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Contract, or to exercise any option conferred by this Contract in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

B. Resolution of Disputes and Governing Law.

1. **Alternative Dispute Resolution.** If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written agreement of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted under JAMS rules or policies. The arbitrator may be selected by agreement of the parties or through JAMS. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

2. **Applicable Law and Jurisdiction.** This Contract shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method as set forth above, in the event any claim, dispute or action arising from or relating to this Contract cannot be submitted to arbitration, then it shall be commenced exclusively in the Pierce County Superior Court or the United States District Court, Western District of Washington as appropriate. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or

bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section VII of this Contract.

C. Written Notice. All communications regarding this Contract shall be sent to the parties at the addresses listed on the signature page of this Contract, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Contract or such other address as may be hereafter specified in writing.

D. Assignment. Any assignment of this Contract by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Contract shall continue in full force and effect and no further assignment shall be made without additional written consent.

E. Modification. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by a duly authorized representative of the City and Artist.

F. Entire Contract. The written provisions and terms of this Contract, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Contract. All of the above documents are hereby made a part of this Contract. However, should any language in any of the Exhibits to this Contract conflict with any language contained in this Contract, the terms of this Contract shall prevail.

G. Compliance with Laws. Artist agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Artist's business, equipment, and personnel engaged in operations covered by this Contract or accruing out of the performance of those operations.

H. Counterparts. This Contract may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Contract.

I. Ratification. The parties agree to ratify and confirm any acts consistent with the authority and prior to the final approval of this contract

**IN WITNESS, the parties below execute this Contract, which shall become effective on the last date entered below.**

<p>By: _____ <i>(signature)</i></p> <p>Print Name: _____</p> <p>DATE: _____</p>	<p><b>CITY OF SUMNER:</b></p> <p>By: _____ <i>(signature)</i></p> <p>Print Name: _____</p> <p>Its _____ <i>(Title)</i></p> <p>DATE: _____</p> <p>By: _____</p>
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	<p style="text-align: right;"><i>(signature)</i></p> <p>Print Name: _____          Its _____  <span style="text-align: right;"><i>(Title)</i></span></p> <p>DATE: _____</p> <p>Approved as to Form:</p> <p>Attest: _____ Approved as to form: _____</p> <p>City Clerk _____ City Attorney _____          DATE: _____ DATE: _____</p>
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<p><b>NOTICES TO BE SENT TO:</b></p>	<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CITY OF SUMNER:</b></p> <p>Lana Hoover, Community Relations Specialist          City of Sumner          1104 Maple Street          Sumner, WA 98390          253.299.5781 (telephone)</p>
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